

EXHIBIT 4

Re. Harvey & Knotts Site
Ref. CERCLA 86-004

DECISION DOCUMENT

PREAUTHORIZATION OF A CERCLA §111(a) CLAIM

Harvey & Knotts Site - New Castle County, Delaware

STATEMENT OF AUTHORITY

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), authorizes persons (other than the U.S. Government, State and local governments, or Indian tribes) to seek reimbursement for response costs incurred in carrying out the National Contingency Plan (NCP). Section 112 of CERCLA directs the President to establish the forms and procedures for filing claims against the Hazardous Substances Superfund (the Superfund). Executive Order 12580 delegates to the Environmental Protection Agency (EPA) the responsibility for such claims. Executive Order 12580 delegates to EPA the authority to reach settlements pursuant to section 122. The Assistant Administrator for Solid Waste and Emergency Response (AA/OSWER) is delegated authority to evaluate and make determinations regarding claims (EPA Delegation 14-9 "Claims Asserted Against the Fund," April 16, 1984).

REMEDY SELECTED BY EPA AND SUBSEQUENT ACTION

On September 30, 1985, James M. Seif, EPA Regional Administrator for Region III, signed the Record of Decision (ROD) for the Harvey & Knotts site (Attachment 1). The ROD selected as a remedy Alternative 3A, on-site pond cleanup; off-site drum, debris and waste pile disposal; and contaminated ground water extraction, treatment and reapplication of the treated water (soil flushing). The ROD deferred selection of remedial response measures, if any, for the wetlands and surface waters adjacent to the site, and also deferred decisions regarding final closure of the site and the level of ground water quality to be achieved.

In the Fall of 1985, General Motors Corporation (GM) initiated settlement discussions with EPA. These discussions followed EPA's issuance of notice letters to five potentially responsible parties (PRPs), including GM, and resulted in GM's participation in the Remedial Investigation and Feasibility Study (RI/FS) conducted by EPA. GM hired Fred C. Hart Associates to prepare the Remedial Action Work Plan which EPA approved in April 1986. Following several discussions between Region III and GM, in January 1986 GM submitted a draft Consent Decree. In early May of 1986, EPA and GM entered into agreement in principle which provided that GM would carry out the remedy selected by EPA and that EPA would reimburse GM for a portion of the costs of the remedy. In July 1986, EPA provided GM with a copy of 'GUIDANCE ON REQUESTS FOR PREAUTHORIZATION BY POTENTIALLY RESPONSIBLE PARTIES'. In October 1986, GM submitted its formal request for preauthorization. A Consent Decree between EPA, the State of Delaware and GM is being executed simultaneously with this Decision Document.

FACTORS CONSIDERED IN PREAUTHORIZING

Preauthorization (i.e., EPA's prior approval to submit a claim against the Superfund for necessary response costs incurred as a result of carrying out the NCP) does not entail the setting aside of monies from the Superfund in an amount to satisfy future claims. However, it does represent the Agency's commitment that if the response action is conducted in accordance with the preauthorization and costs are reasonable and necessary, reimbursement, subject to any maximum amount of money set forth in the preauthorization decision document, will be had from the Superfund, subject to the availability of appropriated monies.

In evaluating GM's request for preauthorization of a response claim, EPA has considered four general criteria:

- (1) The significance of the threat to public health, welfare, or the environment posed by the release of hazardous substances or pollutants and contaminants;
- (2) Whether the proposed remedy cost-effectively addresses the threat posed by the release;
- (3) Whether the applicant for preauthorization demonstrates engineering expertise and a knowledge of the NCP and attendant guidance; and
- (4) Whether the applicant demonstrates evidence of State cooperation.

FINDINGS

(1) Based on the analytical results from the preliminary assessment and site investigation conducted by EPA, the Hazard Ranking System score for the site was set at 30.77. The site was placed on the National Priorities List (NPL) in 1982. While EPA has conducted a removal action (1982) and an Initial Remedial Measure (1984) in an effort to minimize immediate and obvious hazards to the public, surface and subsurface contamination remain at the site, as well as numerous drums that have not been staged and characterized to determine whether they contain any hazardous substances. These findings satisfy the first criterion: the release poses a significant threat to public health, welfare or the environment.

(2) The remedy which GM proposes to implement at the site (i.e., on-site pond cleanup; off-site drum, debris and waste pile disposal; and contaminated groundwater extraction, treatment and reapplication of the treated water) is the remedy selected by EPA. EPA's ROD dated September 30, 1985 certifies that off-site transport and disposal of contaminated material is far more cost-effective than other remedial actions and is necessary to protect public health, welfare and the environment.

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EPA has also determined that the preauthorized remedy is a remedy which will reduce the mobility and toxicity of the hazardous substances at the site to the maximum extent practicable.

(3) GM's request for preauthorization was evaluated for consistency with the NCP and to determine if it supplied the information identified in the Guidance on Preauthorization and other relevant Agency guidance.

(4) The State of Delaware is a party to the Consent Decree and has therefore agreed that the remedy selected by EPA is appropriate, that GM is capable of carrying out the remedy, and has further agreed to participate in the funding for operation and maintenance (see State's letter to EPA dated May 15, 1986).

Analysis of Consistency with the NCP

Section 111(a)(2) of CERCLA authorizes the payment of claims for costs incurred as a result of carrying out the NCP. In order for such costs to be considered within the meaning of section 111(a)(2) of CERCLA, the person undertaking the response action must comply with relevant provisions of the NCP. The provisions of the NCP that are relevant to the remedy under consideration are:

- (1) 300.25(d) (seeking Superfund reimbursement)
- (2) 300.38 (worker health and safety);
- (3) 300.68 (remedial actions), except for subsections (a), (b), (e)(2)(xvi), and (f)(iv); and
- (4) 300.69 (documentation and cost recovery), except for subsection (d), which applies to Federal agencies.

GM filed a preauthorization request with EPA in advance of undertaking work at the site. This satisfies point (1) of the NCP provisions listed above.

GM has developed a comprehensive Health and Safety Project Plan for the Harvey & Knotts site. This Plan was submitted as a part of GM's Workplan and was approved by EPA in April 1986. This satisfies point (2) of the provisions of the NCP listed above. As a term and condition of preauthorization, GM shall implement the plan as approved by EPA or any subsequent revisions to the Plan which may be approved by EPA.

The ROD forms the conceptual framework of the cleanup and states the goals for the design work. On-site conditions often determine how the cleanup goals and objectives can be best achieved. While GM's Workplan contains specific activities, grouped in 14 Tasks, designed to implement EPA's ROD, GM must constantly evaluate the sequence of tasks and activities throughout cleanup. To ensure that GM complies with the NCP and implements a cost-effective remedy, as a term and condition of preauthorization, GM shall

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During design and cleanup consider treatment of contaminated surface and subsurface soils associated with the drums and contaminated soils and sediments associated with the pond by reapplication of the treated ground water. GM shall implement the more cost-effective option (i.e., treatment by reapplication or off-site treatment and disposal). If off-site treatment or disposal is selected, such treatment or disposal shall be conducted in compliance with section 121(d)(3) of CERCLA.

With regard to contamination of the wetlands, the ROD defers selection of remedial response measures, if any, for the wetlands and surface waters adjacent to the site. Section 111(a)(2) provides for the payment of "claims for necessary response costs...." Such costs do not include costs for restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resource (hereinafter referred to as "restoration costs"). Response costs may include the costs of cleaning up soil and ground water contamination, but not the costs of restoring the natural vegetation, beyond that required to prevent soil erosion or control sediment transport. Therefore, eligible costs which GM may recover from the Superfund do not include restoration costs for the adjacent wetland.

The ROD provides for the selection of target and final end-point levels of residual ground water and soil contaminants for soil flushing. As a term and condition of preauthorization GM must implement a detailed quality assurance/quality control plan and obtain EPA's prior approval to modify environmental or performance standards. The decision on whether to cap the site is deferred until the final soil and ground water levels are met in the field during operation. Because a decision to cap the site affects the cost of the remedy, the terms and conditions provide that GM may submit a revised application for preauthorization upon EPA's determination of the requirements for final closure of the site. The costs of operation and maintenance, subsequent site management and the purchase of the property are not eligible for reimbursement. The operating costs necessary to ensure that all or a portion of the remedy is operational and functional (i.e., shake down costs) are eligible if such costs are incurred within one year of completion of such remedy or portion thereof.

The terms and conditions also provide that if GM finds it necessary to modify the actions that EPA preauthorized, or if it becomes apparent that the project's costs will exceed the approved costs, a revised application may be submitted to EPA. The Consent Decree provides that EPA will consider such requests for preauthorization in a timely manner and will preauthorize 33 1/3 percent of reasonable and necessary costs to implement the approved remedy. The information submitted by GM when supplemented by the terms and conditions above satisfy point (3) of the provisions of the NCP listed above.

Section 300.69 of the NCP requires documentation of all phases of response actions. GM's application proposed the collection of documents for all phases and identified the following information

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between EPA and GM. The terms and conditions reiterate the requirements necessary to support and document claims, and include documentation that: 1) any response activities conducted were preauthorized by EPA, 2) any deviation from the terms and conditions of this preauthorization decision document was approved in advance by EPA, 3) all claimed costs are well documented in accordance with generally accepted accounting principles and practices consistently applied, and 4) all claimed costs were preauthorized and are reasonable and necessary. In determining whether costs are reasonable and necessary, EPA will rely on the appropriate Federal cost principles (non-profit organizations - OMB circular A-122; profit making organizations - 48 CFR Subparts 31.1 and 31.2). All cost documentation and any records relating to claims shall be maintained for a period of not less than six years from the date of the final claim and EPA shall be provided with access to such records. At the end of six years GM shall notify EPA of the location of the records and allow EPA the opportunity to take possession of the records before they are destroyed. This satisfies point (4) of the NCP provisions listed above. The Consent Decree specifies the required regular and periodic reports to EPA. In addition, as a part of EPA's oversight role, GM shall provide necessary site access and shall immediately notify the Agency if it is unable to initiate or complete the preauthorized response action.

Additional Considerations

EPA has evaluated GM's proposal to implement EPA's remedy and the proposed level of Superfund participation and has determined that a settlement with GM for the remedy is appropriate under the EPA Interim Settlement Policy.

GM's application for preauthorization, in accordance with the Guidance, proposes procurement procedures which are designed to ensure maximum open and free competition. The terms and conditions specify the requirements to ensure such maximum open and free competition and to ensure that goods and services are secured at a reasonable cost. These terms and conditions include the use of a Differing Site Conditions clause equivalent to that found at 40 CFR Part 33.1030(4); the use of bid evaluation procedures that provide for the award of contracts to the lowest, responsive, responsible bidder, where the selection can be made principally on the basis of price; the settlement and satisfactory resolution of all contractual and administrative issues arising out of preauthorized actions, in accordance with sound business judgement and good administrative practice; the issuance of invitations for bids or requests for proposals, selection of contractors, approval of subcontractors and the management of contracts in a manner to minimize change orders and prevent claims; and the settling of protests, claims disputes, and other related procurement matters. GM shall not contract with persons currently debarred or suspended by EPA pursuant to 40 CFR Part 32.

GM's application for preauthorization proposes a schedule for submitting claims against the Superfund. Following this schedule, GM shall submit claims to EPA for review and approval.

between EPA and GM, the Consent Decree and the terms and conditions provide a schedule for the filing of 5 claims.

In summary, GM's preauthorization request demonstrates a knowledge of relevant NCP provisions and EPA guidance for the conduct of a remedial action. This finding, supplemented by the terms and conditions above, satisfies the third criterion for preauthorization.

In determining whether or not claimed costs are reasonable and necessary, EPA may use the facilities and services of private insurance and claims adjusting organizations or Federal personnel. In making a determination whether costs are allowable, the claims adjuster will rely upon the appropriate Federal cost principles (non-profit organizations - OMB circular A-122; profit making organizations - 48 CFR Subparts 31.1 and 31.2).

DECISION AND TERMS AND CONDITIONS

I preauthorize General Motors Corporation to submit a claim(s) against the Superfund in an amount not to exceed the lesser of three million eighty-six thousand dollars (\$3.086 million), or thirty-three and one third percent (33 1/3%) for reasonable and necessary eligible costs incurred in carrying out the remedy set forth in EPA's Record of Decision for the Harvey & Knotts site (Attachment 1 hereto), subject to the following terms and conditions:

- 1) GM shall implement the worker health and safety plan which was approved by EPA or any subsequent revisions to the Plan which may be approved by EPA.
- 2) GM shall, except where EPA has determined that a waiver is appropriate, comply with the substantive requirements of applicable or relevant and appropriate Federal and State public health and environmental statutes and regulations.
- 3) Modification of design elements or performance requirements contained in the design report shall require approval by the AA/OSWER or his designee.
- 4) If EPA subsequently determines that it is necessary to install a cap to ensure adequate protection of public health, welfare and the environment, and either GM agrees to install the cap or GM is ordered to do so pursuant to the provisions of the Consent Decree, GM shall submit a revised application for preauthorization, as provided below, and will implement that portion of the remedy for the site.
- 5) GM must provide for site management sufficient to ensure continuing protection of human health and the environment.

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- 6) GM shall develop a remedial design plan which complies with EPA's Remedial Design and Remedial Action Guidance. The remedial design to be developed by GM shall contain an analysis of applicable or relevant and appropriate Federal and State public health and environment requirements and how the remedy will comply with such requirements.
- 7) GM shall demonstrate, during design and cleanup, that it considered treatment of contaminated surface and subsurface soils associated with the drums and contaminated soils and sediments immediately associated with the pond by reapplication of the treated ground water, sequencing of the pond cleanup, and on-site storage of treated ground water during the winter months. GM shall implement the more cost-effective option. The results of GM's analyses shall be submitted to EPA.
- 8) GM shall develop and implement:
 - a) Bid evaluation procedures which provide maximum open and free competition, do not unduly restrict or eliminate competition, provide for the award of contracts to the lowest, responsive, responsible bidder, where the selection can be made principally on the basis of price.
 - b) Contracts for construction which include a Differing Sites Conditions clause equivalent to that found at 40 CFR §33.1030(4).
 - c) Procedures to settle and satisfactorily resolve, in accordance with sound business judgement and good administrative practice, all contractual and administrative issues arising out of preauthorized actions. GM shall issue invitations for bids or requests for proposals, select contractors, approve subcontractors, manage contracts in a manner to minimize change orders and prevent contractor claims, settle protests, claims disputes, and other related procurement matters, and handle subcontracts to assure that work is performed in accordance with terms, conditions and specifications of contracts.
 - d) Detailed quality assurance/quality control plans for design activities (e.g., sampling, monitoring, etc.) and construction activities (e.g. sampling, operations, etc.) in accordance with relevant guidance.
 - e) A financial management system that consistently applies generally accepted accounting principles and practices and at least includes an accurate, current and complete accounting of all financial transactions for the project, complete with supporting documents, and a systematic method to resolve audit findings and recommendations.

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- 9) GM shall provide EPA and its agents with site access and shall immediately notify the Agency if it is unable to initiate or complete the preauthorized response action.
- 10) In submitting claims to the Superfund, GM shall
 - a) document that response activities were preauthorized by EPA;
 - b) substantiate all claimed costs through a financial management system, and
 - c) document that all claimed costs were eligible for reimbursement pursuant to this preauthorization and are reasonable and necessary in accordance with the appropriate Federal cost principles.
- 11) GM shall maintain all cost documentation and any records relating to its claim for a period of not less than six years from the date on which the final claim has been submitted to the Superfund, and shall provide EPA with access to its records. At the end of six years GM shall notify EPA of the location of all records and allow EPA the opportunity to take possession of records before they are destroyed. GM shall cause to be inserted in all agreements between itself and contractors performing work at the site a clause providing for the same requirement to maintain records and to provide access to records as that required of GM.
- 12) Claims may be submitted by GM only while it is in compliance with the terms of the Consent Decree and no more frequently than the following as documented by appropriate Major Milestone Reports:
 - a. Completion of the design phase (costs incurred for installation of monitoring wells (Task 1), and Workplan Tasks 2,3,4,5,6,7 and 8)
 - b. Completion of construction (costs incurred for Workplan Task 9)
 - c. 50 percent of operation (costs incurred for Workplan Tasks 1, but not recovered in Payment 1, and Task 10, and 50% of Task 11)
 - d. Completion of operations (costs incurred for remainder of Workplan Task 11, and Tasks 12 and 13)
 - e. Completion of post closure activities (Task 14).
- 13) If GM finds it necessary to modify the actions that EPA preauthorized, or if it becomes apparent that the project's costs will exceed the approved costs, GM may submit to EPA a revised application for preauthorization. Further,

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GM may submit to EPA a revised application for preauthorization upon EPA's determination of the requirements for final closure of the site.

- 14) EPA shall consider requests for preauthorization from GM in a timely manner and will preauthorize 33 1/3 percent of reasonable and necessary costs to implement the approved remedy.
- 15) Claims shall be submitted to the Administrator, EPA, Washington, D.C., Attention Director, Office of Emergency and Remedial Response. EPA shall provide the appropriate form(s) for such claims.
- 16) EPA may adjust claimed costs using the facilities and services of private insurance and claims adjusting organizations or Federal personnel. In making a determination whether costs are allowable, the claims adjuster will rely upon the appropriate Federal cost principles (non-profit organizations - OMB circular A-122; profit making organizations 48 CFR Subparts 31.1 and 31.2). Where additional costs are incurred due to acts or omissions of the claimant, payment of the claim will be adjusted accordingly. EPA may require the claimant to submit any additional information needed to determine whether the actions taken were reasonable and necessary.
- 17) Payment of any claim shall be subject to GM subrogating to the United States its rights as claimant to the extent to which its response costs are compensated from the Superfund. Further, GM shall assist the United States in any cost recovery action which may be initiated. As a part of this assistance, GM and all GM's contractors shall furnish the personnel, services, documents, and materials needed to assist EPA in the collection of evidence to document work performed and costs expended by GM or GM's contractors at the Harvey & Knotts site in order to aid in cost recovery efforts. Assistance shall also include providing all requested assistance in the interpretation of evidence and costs and providing requested testimony. All of GM's contracts for implementing the Consent Decree shall include a specific requirement that the contractors agree to provide this cost recovery assistance.
- 18) Eligible costs

GM may request reimbursement for up to 33 1/3 percent of reasonable and necessary eligible costs incurred, consistent with the NCP, in carrying out the remedy above, with the following limitations:

- a) Costs may be incurred only after the date of this preauthorization;

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- b) Costs incurred for the purpose of restoring the wetlands or surface waters are not eligible for reimbursement from the Superfund;
 - c) Costs incurred for the payment of persons listed on the EPA Master List of Debarred, Suspended or Voluntary Excluded Persons at the time that the contract is awarded shall not be eligible for reimbursement unless the claimant obtains approval from EPA pursuant to 40 CFR Part 32 prior to incurring the obligation.
 - d) Interest accrues on amounts due Settlers pursuant to this agreement where EPA fails to pay the amount within sixty (60) days of EPA's receipt of a completed claim from the Settlers. A completed claim is a demand for a sum certain which includes all documentation required to substantiate the appropriateness of the amounts claimed. Where the Settlers submit a claim which is technically complete but for which EPA requires additional information in order to evaluate the amount claimed, interest will not accrue on the claim until sixty (60) days after EPA's receipt of the requested additional information. The rate of interest paid on a claim is the rate of interest on investments of the Superfund established by subchapter A of chapter 98 of the Internal Revenue Code of 1954.
 - e) Costs incurred for operation and maintenance are not eligible for reimbursement from the Superfund.
- 19) If any material statement or representation made in the application for preauthorization is false, misleading, misrepresented, or misstated and EPA relied upon such statement in making its decision, the preauthorization by EPA may be withdrawn following written notice to GM. Disputes arising out of EPA's determination to withdraw its preauthorization shall be governed by Paragraph XII of the Consent Decree. Criminal and other penalties may apply (see Attachment 3).
- 20) The Superfund is not hereby obligated to reimburse the claimant for subsequent remedial actions if those remedial actions are necessary as a result of the failure of the claimant, his employees or agents, or any third party having a contractual relationship with the claimant to properly perform activities under the Work Plan or any modification thereto approved by EPA and in conformance with the terms and conditions of this preauthorization decision document. EPA may require the claimant to submit any additional information needed to determine whether the actions taken were reasonable and necessary.

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- 21) This preauthorization shall be effective as of the date of entry of the attached Consent Decree.

J. Winston Porter 5/6/87
J. Winston Porter Date
Assistant Administrator,
Solid Waste and Emergency Response

ATTACHMENTS

1. EPA Record of Decision for the Harvey & Knotts Site
2. Consent Decree
3. Civil and Criminal Penalties

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ATTACHMENT 3

CERCLA PENALTY FOR PRESENTING FRAUDULENT CLAIM

Any person who knowingly gives or causes to be given false information as a part of a claim against the Hazardous Substances Superfund may, upon conviction, be fined in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. (42 USC 9612 (b)(1).)

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

The claimant is liable to the United States for a civil penalty of \$2,000, and an amount equal to two times the amount of damages sustained by the Government because of the acts of that person, and costs of the civil action. (31 USC 3729 and 3730.)

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS

The claimant will be charged a maximum fine of not more than \$10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749; 18 USC 287, 1001.)

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